

Arbitration Committee Meeting

Date: June 21, 2021
Time: 12:30 – 1:30
Location: Online (Zoom)

Attendees: 51 Attendees

Allen Waxman	John Pinney
Anna Hershenberg	Kai Sass-Hauschildt
Ashley Jones	Kelly Herrers
Benjamin Roe	Laura MacDonald
Bernardo Cremades	Lawrence Schaner
Cai Phillips-Jones	Lee Rovinescu
Charles Patrizia	Lio Bocorny
Claire Alston	Madina Lokova
Dana MacGrath	Marc Goldstein
Daneisha LaTorre	Michael Lampert
David Brodsky	Mylene Chan
David Rivkin	Naiane Melo
Donald Rose	Nawi Ukabiala
Ellen Parker	Oliver Armas
Eric Franco	Olivier ANDRE
Eric Wiechmann	Orlando Cabrera
Erin Gleason	Pat Kingsley
Eugenie Rogers	Peter Halprin
Fernando Marcondes	Preeti Bhagnani
Helena Erickson	Richard Ziegler
Inbar Gal	Sherman Kahn
Jacob Feinberg	Shigeki Obi
Jacqueline Perrotta	Surya Gopalan
James Reiman	Ulyana Bardyn
Jennifer Glasser	Viren Mascarenhas
Johannes Willheim	

Minutes:

Ms. Glasser welcomed members of the Arbitration Committee of the International Institute for Conflict Prevention & Resolution (CPR) and began the meeting. The meeting was held by video.

1. Update on the Model Procedural Order for Remote Arbitration Proceedings

Richard Ziegler provided an update on his discussions with the CPR Advisory Council and the Model Procedural Order Task Force. He explained that the overall response was that the Model Order has

been valuable but that some tweaks were warranted. Mr. Feinberg circulated a revised draft of the Model Order. Mr. Ziegler summarized the tweaks:

- a. Revisions to the introduction to emphasize that the Model Order is a checklist for tribunals, and that tribunals should seek input from the parties as to how they would like to run the proceedings. In particular, the Model Order could be adapted to account for hybrid virtual / in-person proceedings.
- b. The previous Model Order contemplated mock technology tests for all hearing participants, including with links to scripts for those tests. The revised Model Order cuts back on the scope of these tests.
- c. Additional minor edits, which addressed the process for administering remote oaths, and incorporated optionality as to whether all (or just some) hearing participants should remain on screen.

Ms. Erickson indicated that CPR would like to issue the revised draft Model Order as soon as possible and solicited comments by 25 June. Ms. Erickson said that if no further comments are received, the Model Order will be sent to the CPR Council for final approval.

2. Panel discussion on The Pledge – Equal Representation in Arbitration

The Committee hosted a panel discussion concerning equal arbitration in international arbitration. The panelists were: Kelly Herrera (Senior Counsel, ConocoPhillips), Ashley Jones (Senior Knowledge Lawyer, Freshfields Bruckhaus Deringer), and Lee Rovinescu (Partner, Freshfields Bruckhaus Deringer).

Ms. Jones provided background to the Pledge and explained its objective to promote gender diversity in international arbitration. She noted that the general trend across arbitral institutions is more female arbitrator appointments, year on year. Ms. Jones then walked through several committees and sub-committees established to operationalize the Pledge. She noted, in particular, that one objective the Pledge had achieved was to have several arbitral institutions publish data regarding gender diversity in arbitration panels.

Mr. Rovinescu explained that after signing the pledge, enterprises still need to give effect to it and implement its goals. He noted that there has been good progress over 5 years but that there remains work to do. He explained that the data shows that arbitral institutions are doing well in their own appointments in furthering the goal of equal representation. He noted that the data also shows that parties need to do relatively more to advance this goal.

Ms. Herrera discussed the Corporate Guidelines. She explained that equal representation concerns occurred at three key points: (i) when involved in the appointment of arbitrators; (ii) when involved in selected external counsel; and (iii) in the workplace generally. Ms. Herrera discussed good practices in operationalizing the Pledge in these contexts. Ms. Jones then talked through the arbitrator search tool on the Pledge's website.

The panel participants then introduced and responded to attendee questions. Among these comments, Ms. Jones noted that one practical step law firms can take is to implement a formal policy giving effect to the Pledge. This might require, she noted, a fair representation of women in all arbitrator lists

proposed to clients. She also noted that regular self-monitoring with realistic targets has been shown to make a difference. Ms. Erickson noted that CPR, for its part, reviews the diversity of its arbitrator lists annually. She noted that currently about 37% of the roster comprised women. She also noted that 60% of new entrants have been diverse. Mr. Mascarenhas noted that parties could consider appointing arbitrators in countries where disputes occur rather than where those disputes are legally seated. He noted that local disputes institutions and legal directories are a good source of information for this purpose.

3. Update on Task Force on CPR Protocol on Presentation of Documents and Witnesses in Commercial Arbitration

Mr. Mascarenhas provided an update on the Task Force on the CPR Protocol on the Presentation of Documents and Witnesses in Commercial Arbitration. He explained that the Task Force has been working over the last several months to update the protocol and submitted it to the CPR Council earlier this month. The CPR Council reverted with comments on 15 June. The Task Force incorporated those edits. The edits addressed the electronic production of documents, potential gamesmanship involved in calling witnesses, and how to present witnesses. Ms. Erickson called for further comments on the revised protocol by 30 June.

4. Other CPR Announcements

Mr. Feinberg provided an update on upcoming CPR committee meetings and referred attendees to the Events page of the CPR website for further information.

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Ms. Glasser concluded the meeting.